

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

**SPCA IN CATTARAUGUS
COUNTY, INC.**

and

Case 03-CA-090311

LINDA VANE, an Individual

**MOTION TO TRANSFER PROCEEDINGS TO BOARD AND
FOR DEFAULT JUDGMENT AND ISSUANCE OF A
SUPPLEMENTAL BOARD DECISION AND ORDER**

PLEASE TAKE NOTICE that pursuant to Sections 102.24 and 102.56 of the National Labor Relations Board's Rules and Regulations and Statements of Procedures, Series 8, as amended, (Board's Rules and Regulations), the undersigned Counsel for the Acting General Counsel ("General Counsel") hereby moves that the National Labor Relations Board, (Board):

(1) transfer this case and continue the proceedings before the Board; (2) deem the allegations set forth in the Compliance Specification and Notice of Hearing issued in the above-captioned matter on July 12, 2013, as admitted to be true without the taking of evidence supporting the allegations in the Compliance Specification; and (3) issue a Supplemental Decision and Order granting Default Judgment and ordering SPCA in Cattaraugus County, Inc., (Respondent), to make payment to Linda Vane in the amount of \$16,756.00, plus interest and additional excess tax liability as the result of a lump sum distribution, to expunge from its records any reference to Vane's unlawful removal from her position and her unlawful discharge, and to notify Vane in writing that it has expunged its records and the unlawful discrimination will not be used against her in any way. In support of this motion, General Counsel shows and alleges that:

1. The Board issued a Decision and Order, dated February 22, 2013,¹ which directed Respondent to, inter alia, make Linda Vane whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, including interest and adverse tax consequences of receiving a lump-sum backpay award, expunge from its records any reference to Vane's unlawful removal from her position and her unlawful discharge, and notify Vane in writing that it has expunged its records and the unlawful discrimination will not be used against her in any way.

2. On May 15, 2013, the United States Court of Appeals for the Second Circuit enforced the Board's Decision and Order. A copy of the Court's mandate is attached as Exhibit 1.

3. On July 12, 2013, a Compliance Specification and Notice of Hearing issued in this proceeding and a copy was served upon Respondent by certified mail on the same date. Copies of the Compliance Specification and the affidavit of service are attached hereto as Exhibit 2.

4. On July 19, 2013, Respondent accepted delivery of the Compliance Specification that was sent by certified mail on July 12, 2013. A copy of the return receipt from the United States Postal Service is attached hereto as Exhibit 3.

5. The answer to the Compliance Specification was due on August 2, 2013. Respondent failed to file an answer.

6. On August 8, 2013, by letter, the Region notified Respondent that it had not received an answer to the Compliance Specification. The letter advised Respondent that if an answer was not received by close of business August 15, 2013, a motion for default judgment would be filed with the Board. A copy of the letter is attached hereto as Exhibit 4.

¹ 359 NLRB No. 68

7. On August 9, 2013, Respondent accepted delivery of the letter referenced to above in paragraph 6, that was sent by certified mail on August 8, 2013. A copy of the return receipt from the United States Postal Service is attached hereto as Exhibit 5.

8. Respondent failed to file an answer to the Compliance Specification by the extended due date.

9. Respondent failed to file an answer to the Compliance Specification in accordance with Sections 102.56 of the Board's Rules and Regulations, although it has been given every opportunity to do so. The required time for such adequate filing has now expired.

WHEREFORE, Counsel for the Acting General Counsel respectfully requests that, in accordance with Sections 102.24 and 102.56 of the Board's Rules and Regulations, the Board deem all matters alleged in the Compliance Specification to be admitted to be true without taking any additional evidence in support of the allegations, and without further notice to the Respondent, and to issue an appropriate Order.

DATED at Buffalo, New York this 20th day of August, 2013.



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MANDATE

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of May, two thousand thirteen,

Before:

Denny Chin,
Raymond J. Lohier, Jr.,
Circuit Judges,
John F. Keenan,
*District Judge.*¹

National Labor Relations Board,

Petitioner,

v.

SPCA in Cattaraugus County, Inc.,

Respondent.

ORDER

Docket Number: 13-1124

Board Case No. 3-CA-90311

**JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, SPCA in Cattaraugus County, Inc., its officers, agents, successors, and assigns, enforcing its order dated February 22, 2013, in Case No. 3-CA-90311, and the Court having considered the same, it is hereby

¹ Judge John F. Keenan, of the United States District Court for the Southern District of New York, sitting by designation.

ORDERED AND ADJUDGED by the Court that the Respondent, SPCA in Cattaraugus County, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

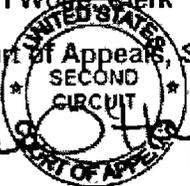
FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk




A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

NATIONAL LABOR RELATIONS BOARD

v.

SPCA IN CATTARAUGUS COUNTY, INC.

ORDER

SPCA in Cattaraugus County, Inc., Olean, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an overly broad confidentiality policy that prohibits employees from publicly criticizing, condemning, or degrading SPCA Board Members, employees, or policies.

(b) Removing employees from their positions because they engage in protected concerted activities, and to discourage employees from engaging in these or other concerted activities.

(c) Threatening employees with discharge because they engage in protected concerted activities, and to discourage employees from engaging in these or other concerted activities.

(d) Discharging or otherwise discriminating against employees because they engage in protected concerted activities, and to discourage employees from engaging in these or other concerted activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the confidentiality policy prohibiting employees from publicly criticizing, condemning or degrading SPCA Board Members, employees or policies, and notify employees in writing that this has been done and the rule is no longer in force.

(b) Within 14 days from the date of this Order, offer Linda Vane full reinstatement to her former job as a medical attendant or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(c) Make Linda Vane whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(d) Compensate Linda Vane for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful removal of Linda Vane from the position of medical attendant and her unlawful discharge and, within 3 days thereafter, notify her in writing that this has been done and that the unlawful discrimination will not be used against her in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Olean, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Acting Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 15, 2012.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official, on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain an overbroad confidentiality policy that prohibits you from publicly criticizing, condemning, or degrading SPCA Board Members, employees, or policies.

WE WILL NOT remove you from your position because you engage in protected concerted activities, or to discourage employees from engaging in these or other concerted activities.

WE WILL NOT threaten you with discharge because you engage in protected concerted activities, or to discourage employees from engaging in these or other concerted activities.

WE WILL NOT discharge or otherwise discriminate against you because you engage in protected concerted activities, or to discourage employees from engaging in these or other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind our overbroad confidentiality policy that prohibits you from publicly criticizing, condemning, or degrading SPCA Board Members, employees, or policies.

WE WILL, within 14 days from the date of the Board's Order, offer Linda Vane full reinstatement to her former job as a medical attendant or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Linda Vane whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with interest.

WE WILL compensate Linda Vane for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for her.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful removal of Linda Vane from the position of medical attendant and her unlawful discharge, and WE WILL, within 3 days thereafter, notify Linda Vane in writing that this has been done and that the unlawful discrimination will not be used against her in any way.

SPCA IN CATTARAUGUS COUNTY, INC.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

SPCA IN CATTARAUGUS COUNTY, INC.

and

CASE 03-CA-090311

LINDA VANE, an Individual

**COMPLIANCE SPECIFICATION
AND NOTICE OF HEARING**

On May 15, 2013, the United States Court of Appeals for the Second Circuit enforced the Decision and Order of the National Labor Relations Board, dated February 22, 2013, which directed SPCA in Cattaraugus County, Inc., (Respondent), to, inter alia, offer Linda Vane (“Vane”) full reinstatement, make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, including interest and adverse tax consequences of receiving a lump-sum backpay award, expunge from its files any reference to Vane’s unlawful removal from her position and her unlawful discharge, and notify Vane in writing that it has expunged its records and the unlawful discrimination will not be used against her in any way.

A controversy has arisen over the amount of backpay owing and Respondent has failed to notify Vane that its records have been expunged as required by the Board’s Order, which was enforced by the Court. Therefore, the Regional Director for the Third Region, pursuant to authority duly conferred upon her by the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges that the backpay is as follows:

1. The backpay period begins on June 25, 2012, and ends on June 17, 2013.
2. (a) An appropriate measure of the calendar quarter gross backpay amounts owing to Vane is based on the average weekly gross earnings for the 12-week period immediately preceding her discharge.
 - (b) Appendix 1 sets forth the calculation for the average weekly gross earnings.

(c) Appendix 2 sets forth the calendar quarter gross backpay amounts owing to Vane.

3. (a) Calendar quarter net backpay is the difference between calendar quarter gross backpay and calendar quarter interim earnings.

(b) Vane obtained interim employment on May 31, 2013, and her quarterly interim earnings offset the gross backpay amount for the second quarter of 2013, resulting in calendar quarter net backpay owing to Vane, as set forth in Appendix 2.

4. (a) In accordance with *Latino Express, Inc.*,¹ Vane is entitled to be compensated for the adverse tax consequences of receiving the lump-sum backpay covering a period that spans over two consecutive tax years. If not for the unfair labor practice committed by Respondent, the backpay award for Vane would have been paid over more than one year rather than paid in the year Respondent makes final payment in this case. The backpay for this case should have been earned in 2012 and 2013 rather than exclusively in 2013.²

(b) In order to determine what the appropriate excess tax award should be, the amount of federal and state taxes need to be determined for the backpay as if the monies were paid when they were earned throughout the backpay period, as described below in paragraphs 4(c) and (d). Also, the amount of federal and state taxes need to be calculated for the lump sum payment if the payment was made this year, as described below in paragraphs 4(e) and (f). The excess tax liability was calculated as the difference between these two amounts.

(c) The amount of Taxable Income for each year is based on the calculations for backpay in this compliance specification for each of 2012 and 2013 and is summarized for Vane in Appendix 2. Using this Taxable Income for the various years, federal and state taxes were

1 359 NLRB No. 44 (December 18, 2012).

2 Interest and excess tax liability will need to be updated to reflect the actual year of payment.

calculated using the federal and state tax rates for the appropriate years.³ The federal rates are based on Vane's filing taxes as Single.

(d) The amount of taxes owed for 2012 would have been the amounts set forth in Appendix 3. The total of these amounts for Vane are \$947.00 for federal taxes and \$570.00 for state taxes.

(e) The total amount of the lump sum award for Vane that is subject to this excess tax award is \$16,677.00 and is set forth in Appendix 2.⁴ The lump sum amount is based on the backpay calculations described in this specification.⁵ The amount of taxes owed in 2013 is based on the current federal and state tax rates⁶ and on the fact that Vane will be filing her income taxes as Single. The amount of taxes owed on the lump sum for Vane is calculated as \$0 for federal taxes and \$0 for state taxes and shown in Appendix 3.

(f) The adverse tax consequence for Vane is the difference between the amount of taxes on the lump sum amount being paid in 2013 of \$936.00 for federal taxes and \$570.00 for state taxes and the amount of taxes that would have been charged if these amounts were paid when the backpay was earned in 2012 of \$947.00 for federal taxes and \$570.00 for state taxes. Thus the excess tax liability for Vane is \$0 for federal taxes and \$0 for state taxes as set forth in Appendix 3.

(g) The excess tax liability payment that is to be made to Vane is also taxable income and causes additional tax liabilities. Appendix 3 also includes a calculation for these supplemental taxes. This amount is called the incremental tax liability. The incremental tax includes all of the taxes that Vane will owe on the excess tax payment. This incremental tax is

³ The actual federal tax rates were used, while the state's average tax rate was used for these previous years.

⁴ The lump sum amount does not include interest on the amount of backpay owed. Interest should be included in the lump sum amount; however interest continues to accrue until the payment is made. The lump sum amount will need to be adjusted when backpay is paid to the discriminatee to include interest.

⁵ There is no excess tax liability for backpay that would have been earned in the year a lump sum award is made.

⁶ The actual federal tax rates were used for the current year, while an average state tax rate for the current year was used.

calculated using the federal tax rate used for calculating taxes for the backpay award and that average state tax rate for 2013. This amount is \$79.00 and shown in Appendix 3.

(h) The Total Excess Taxes is the total tax consequence for Vane receiving a lump-sum award covering a backpay period that spans two consecutive tax years. The total Excess Taxes owed to Vane is \$79.00 which is determined by adding the Excess Taxes and Incremental Taxes as shown in Appendix 3.

SUMMARY

Summarizing the facts and calculations referred to above, the obligation of Respondent under the Board Order and Court Judgment, to make whole Linda Vane will be discharged by payment to her in the total amount of \$16,756.00, plus interest and additional excess tax liability as described above in paragraphs 4(a) through (h),⁷ pursuant to such Orders and judgment, minus tax withholding by Federal and State laws.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT commencing on **September 25, 2013**, at **10:00 a.m.**, in the Olean City Courthouse, 101 East State Street, Olean, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, they must file an answer to the compliance specification. The answer must be received by this office on or before **August 2, 2013**, or postmarked on or before **August 1, 2013**.

⁷ The amount of excess tax liability would need to be updated to reflect the actual date of payment.

Unless filed electronically in a PDF format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

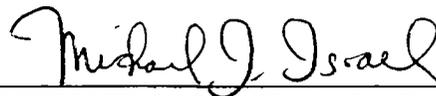
An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed and sworn to by the Respondents or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a PDF document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a PDF file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondents from introducing any evidence controverting those allegations.

DATED at Buffalo, New York this 12th day of July, 2013.



MICHAEL J. ISRAEL, Acting Regional Director
NATIONAL LABOR RELATIONS BOARD
Niagara Center Bldg., Suite 630
130 South Elmwood Avenue
Buffalo, New York 14202-2465

SPCA IN CATTARAUGUS COUNTY
CASE 03-CA-090311

LINDA VANE'S PRE-TERMINATION EARNINGS

WEEK ENDING	NO. OF HRS. WORKED		HOURLY RATE	WEEKLY EARNINGS
	REG	OT		
3/24/2012	40.00	8.00	\$ 7.25	\$ 377.00
4/7/2012	40.00	4.00	\$ 7.25	\$ 333.50
4/14/2012	40.00		\$ 7.25	\$ 290.00
4/21/2012	40.00		\$ 7.25	\$ 290.00
4/28/2012	40.00		\$ 7.25	\$ 290.00
5/5/2012	40.00	4.00	\$ 7.25	\$ 333.50
5/12/2012	40.00	8.00	\$ 7.25	\$ 377.00
5/19/2012	40.00	8.00	\$ 7.25	\$ 377.00
5/26/2012	40.00	8.00	\$ 7.25	\$ 377.00
6/2/2012	40.00	8.00	\$ 7.25	\$ 377.00
6/9/2012	40.00	8.00	\$ 7.25	\$ 377.00
6/16/2012	40.00	0.50	\$ 7.25	\$ 295.44
AVERAGE				\$ 341.20

NLRB Backpay Calculation

Case Name: SPCA in Cattaraugus County
 Case Number: 03-CA-090311 Backpay period:
 Claimant: Vane, Linda 6/25/12 - 6/17/13

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2012	2	4/7						
2012	2	4/14						
2012	2	4/21						
2012	2	4/28						
2012	2	5/5						
2012	2	5/12						
2012	2	5/19						
2012	2	5/26						
2012	2	6/2						
2012	2	6/9						
2012	2	6/16						
2012	2	6/23						
2012	2	6/30	341					
2012	2	Total	341		341	-	-	341
2012	3	7/7	341					
2012	3	7/14	341					
2012	3	7/21	341					
2012	3	7/28	341					
2012	3	8/4	341					
2012	3	8/11	341					
2012	3	8/18	341					
2012	3	8/25	341					
2012	3	9/1	341					
2012	3	9/8	341					
2012	3	9/15	341					
2012	3	9/22	341					
2012	3	9/29	341					
2012	3	Total	4,436		4,436	-	-	4,436
2012	4	10/6	341					
2012	4	10/13	341					
2012	4	10/20	341					
2012	4	10/27	341					
2012	4	11/3	341					
2012	4	11/10	341					
2012	4	11/17	341					
2012	4	11/24	341					
2012	4	12/1	341					
2012	4	12/8	341					
2012	4	12/15	341					
2012	4	12/22	341					
2012	4	12/29	341					

NLRB Backpay Calculation

Case Name: SPCA in Cattaraugus County

Case Number: 03-CA-090311

Backpay period:

Claimant: Vane, Linda

6/25/12 - 6/17/13

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2012	4	Total	4,436		4,436	-	-	4,436
2013	1	1/5	341					
2013	1	1/12	341					
2013	1	1/19	341					
2013	1	1/26	341					
2013	1	2/2	341					
2013	1	2/9	341					
2013	1	2/16	341					
2013	1	2/23	341					
2013	1	3/2	341					
2013	1	3/9	341					
2013	1	3/16	341					
2013	1	3/23	341					
2013	1	3/30	341					
2013	1	Total	4,436		4,436	-	-	4,436
2013	2	4/6	341					
2013	2	4/13	341					
2013	2	4/20	341					
2013	2	4/27	341					
2013	2	5/4	341					
2013	2	5/11	341					
2013	2	5/18	341					
2013	2	5/25	341					
2013	2	6/1	341					
2013	2	6/8	341					
2013	2	6/15	341					
2013	2	6/22	68					
2013	2	6/29						
2013	2	Total	3,821	792	3,029	-	-	3,029
				Totals	16,677	-	-	16,677

Adjusted Taxes for Lump Sum Backpay

Case Name: **SPCA in Cattaraugus, Inc.**

Case Number: **03-CA-090311**

Claimant: **Linda Vane**

Year	Taxable Income (Backpay)	Filing Status	State	Federal Tax	State Tax
2012	9,213	Single Filer	NY	947	570
				Taxes Paid:	
				947	570
	(Sum)				
2008 to 2012	9,213	Single Filer	NY	936	570
2013	7,465				
				Excess Tax on Backpay:	0
				Incremental Tax on Backpay:	0
				Total Excess Tax on Backpay:	0
Interest on Backpay:	293				
as of 7/15/13				Tax on Interest:	44
				Incremental Tax on Interest:	17
				Total Excess Tax on Interest:	79
				Additional Tax Liability:	0
				Total Excess Tax Liability:	79

APPENDIX 3

102.55-102.56

R & R

law judge, as appropriate. Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in any administrative or judicial forum which the Board or the Regional Director determines to be appropriate for obtaining compliance with a Board order.

Sec. 102.55 *Contents of compliance specification.*

(a) *Contents of specification with respect to allegations concerning the amount of backpay due.*—With respect to allegations concerning the amount of backpay due, the specification shall specifically and in detail show, for each employee, the backpay periods broken down by calendar quarters, the specific figures and basis of computation of gross backpay and interim earnings, the expenses for each quarter, the net backpay due, and any other pertinent information.

(b) *Contents of specification with respect to allegations other than the amount of backpay due.*—With respect to allegations other than the amount of backpay due, the specification shall contain a clear and concise description of the respects in which the respondent has failed to comply with a Board or court order, including the remedial acts claimed to be necessary for compliance by the respondent and, where known, the approximate dates, places, and names of the respondent's agents or other representatives described in the specification.

(c) *Amendments to specification.*—After the issuance of the notice of compliance hearing but prior to the opening of the hearing, the Regional Director may amend the specification. After the opening of the hearing, the specification may be amended upon leave of the administrative law judge or the Board, as the case may be, upon good cause shown.

Sec. 102.56 *Answer to compliance specification.*

(a) *Filing and service of answer; form.*—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or

without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.*—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.*—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

Sec. 102.57 *Extension of date of hearing.*—Upon the Regional Director's own motion or upon proper cause shown, the Regional Director issuing the compliance specification and notice of hearing may extend the date of the hearing.

Sec. 102.58 *Withdrawal.*—Any compliance specification and notice of hearing may be withdrawn before the hearing by the Regional Director upon his or her own motion.

Sec. 102.59 *Hearing; posthearing procedure.*—After the issuance of a compliance specification and notice of hearing, the procedures provided in sections 102.24 to 102.51 shall be followed insofar as applicable.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 03-CA-090311

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

KRISTIN MCDONALD, Chairperson
THE SPCA IN CATTARAUGUS COUNTY,
INC.
2944 ROUTE 16 N
OLEAN, NY 14760-9713

LINDA VANE
3142 MORGAN HOLLOW RD
ALLEGANY, NY 14706-9431

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8 1/2 by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board: No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

THE SPCA IN CATTARAUGUS COUNTY, INC.

Case 03-CA-090311

and

LINDA VANE, an Individual

AFFIDAVIT OF SERVICE OF: Compliance Specification and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 12, 2013, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

KRISTIN MCDONALD , Chairperson
THE SPCA IN CATTARAUGUS COUNTY,
INC.
2944 ROUTE 16 N
OLEAN, NY 14760-9713

**CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

LINDA VANE
3142 MORGAN HOLLOW RD
ALLEGANY, NY 14706-9431

**CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

July 12, 2013

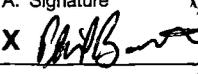
Katy L. Domagala, Designated Agent of
NLRB

Date

Name

/s/Katy L. Domagala

Signature

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>PHIL DANLEY</u> Date of Delivery <u>FEB 19 2004</u></p>
<p>1. Article Addressed to: Kristin McDonald, Chairperson The SPCA in Cattaraugus County, Inc. 2944 ROUTE 10 N Olean, NY 14760 SLL Case 03-CA-090311</p>	<p>D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. Article Number (Transfer from service label)</p>	<p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>7011 3500 0000 8314 6344</p>	<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154</p>



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 3

Niagara Center Building, Suite 630

130 South Elmwood Avenue

Buffalo, New York 14202

Telephone: (716) 551-4931

Facsimile (716) 551-4972

Web Site Address:

<http://www.nlrb.gov>

August 8, 2013

The SPCA in Cattaraugus County, Inc.

Attn: Regina Dafeo, Chairperson

2944 Route 16 N

Olean, NY 14760

**RE: The SPCA in Cattaraugus County, Inc.
Case 03-CA-090311**

Dear Ms. Dafeo:

On July 12, 2013, the Regional Director for Region Three of the National Labor Relations Board issued a Compliance Specification and Notice of Hearing in the above-referenced case. The Compliance Specification notified you that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, you were required to file an original and four (4) copies of an answer to the Compliance Specification by August 15, 2013. As of today's date the Region has not received an answer to the Compliance Specification.

Pursuant to Section 102.20 if no answer is filed, the allegations of the Compliance Specification shall be deemed to be true and shall be found by the Board. If an answer to the Compliance Specification is not received in the Regional Office by the close of business on August 15, 2013, I will make a motion to the Board for default judgment.

Very truly yours,

CLAIRE T. SELLERS

Counsel for the General Counsel

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

612
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The SPCA in Cattaraugus
County, Inc
Attn: Regina D'Amico, Chairperson
2944 Route 116 N
Olean, NY 14760
SLL/CTS-03-CA-090311

2. Article Number

(Transfer from service label)

7011 3500 0000 8314 7013

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Jeri Keis

Agent

Addressee

B. Received by (Printed Name)

Jeri Keis

C. Date of Delivery

8-9-13

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail

Registered Return Receipt for Merchandise

Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

STATEMENT OF SERVICE

I hereby certify that on August 20, 2013, I electronically filed the Acting General Counsel's Motion to Transfer Proceedings To Board and for Default Judgment in Case 03-CA-090311 to the Executive Secretary of the National Labor Relations Board using the NLRB E-Filing System, and I hereby certify that I provided copies of the same documents, via electronic mail (e-mail), to SPCA in Cattaraugus County, Inc. and Linda Vane.

DATED at Buffalo, New York this 20th day of August, 2013.

Respectfully submitted,

/s/ Claire T. Sellers

Claire T. Sellers

Counsel for the Acting General Counsel

National Labor Relations Board

Third Region,

Niagara Center Building, Suite 630

130 S. Elmwood Avenue

Buffalo, New York 14202

Tel.: 716/551-4967